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Dear FCC Commissioners:

Federal Communications Commission
Office of the Secretary

RE: COMMENT on NECA's 5-03-04 Proposal

NorCal Center on Deafness, questions the validity of measurements and criteria used in its calculations when determining the VRS rates. NorCal respectfully petitions for clarification of the methodology used to calculate the VRS rates based on this question.

Typically, comparison data is based criteria used to determine the "average mean" of comparable items. The FCC has invalidated NECA's data collection being that the relay service relies upon internet based video, data collected was not relevant based on its type, size, scope, location, geography, and consideration of research/development. All data collected was based on a criteria focused solely on definitions that apply to text relay as a whole, and does not treat video relay as a completely unique and separate service

Moreover, standards used for TRS are incorrectly utilized and applied with VRS as a service that is NOT similar in many of its measures. NECA's own advisory board recently recognized these shortcomings in the calculations submitted to the FCC and refused to endorse FCC imposed VRS criteria on rate setting imposed on the NECA staff, specifically because the requirements of VRS are so unique, VRS is not the same type of service as the other text-based operatives (CRS, STS, IP/Online) and the criteria recently used to establish rate recommendations should be completely revised to include standard measures unique to VRS and applied uniformly to all providers. Additionally, because of the lack of uniform standards of operation such as hours of operation, service levels, answer speeds, and applications emerging broadband technologies rather than retrofitting to currently inaccessible broadband technologies.

Therefore, basing recommendations on traditional relay, we believe the FCC has seriously erred

NorCal further questions.

- ☐ How the interests of consumers will be served to gain greater advantage of broadband technologies when a recommendation is pending to drop the per minute rate from \$7.75 to \$7.29. This newly recommended rate does not contain any ability to make a market based profit and therefore encourage investment in future research and development (improve the product further). The only reason this is important to the Consumer population is because we are constantly left behind as newer technologies surface for hearing persons who depend on telecommunication as their way of life. Granted, we appreciate the FCC's efforts make sure companies do not take advantage of their need for a margin of profit, however, realistically only companies with deep pockets who are able to capture, dominate the market, and wait until a later time to recover the costs will be whom can "survive". Thus, true multi-vendor competition will be limited, and most importantly, another generation of deaf Consumers will have born and died, before the interests of consumers will be served in terms of emerging technologies. This is not acceptable.
- ☐ Data collected assessing VRS separately should incorporate an appropriate average of "consumer wait time" before a call center picks up and answers the call. The drop in the per minute rate is being "made up" on the backs of interpreters by increasing

the percentage of time they are working so that providers can "break even" and putting callers into que for longer periods of time. Both interpreters are suffering (not good working conditions) and consumers are suffering (longer wait times). This is not acceptable. Comparison data collected should be based on criteria of interpreters based on a 24/7 service vs restricted hours of operation. This in itself markedly impacts the bottom line \$ and nowhere in FCC's criteria shared with NECA does it specifically collect data to validly do an accurate comparison analysis.

- The validity of procedures used to determine interim rates July 30, 2003. The providers were told last July 1st, and then again recently with the upcoming July 1st new rates, that profits would be limited to 11 25% annually (or 1.4% return on working capital) and further informed, not to include research and development, and indirect administrative costs. Such information deleted from the overall picture takes away all ability to make any type of reasonable return on the investment required for this business, given the risk that the rates continue to change so much from year to year (more than decline 50% from 2003 to 2004). We fear, due to this, Providers are going to start dropping out of the market and have already started stagnating with their products. Hence, in doing this, does the FCC realize its own decisions are backfiring toward reducing choices for Consumers, limiting if not encouraging, monopolistic practices for a VRS Provider who can afford to do this? This is not acceptable in the hearing world of telecommunications, nor should it be acceptable for the deaf and hard of hearing consumers. We should not be treated as second-class citizens accessing today's world of telecommunications
- Current practices used by the FCC/NECA for implementing regulations: if VRS was mandated, this should then define critical quality assurances such as 24/7, ASA, interpreter qualifications, etc. Regulations should also go on to include guidelines relating to products for interconnectivity (no restrictions on VRS providers and ease of point to point communications), and reliability. Providers wishing to obtain reimbursement from the USF should actively demonstrate that they meet such Criteria and be periodically monitored to ensure compliance with these VRS standards. Additional standards should also consider that some providers have set up operations in the same city (Austin, St. Paul, DC), dramatically impacting the available interpreters that remain for community interpreter assignments. Interpreters are naturally going toward the higher paying VRS jobs and declining to accept community interpreter assignments, which adversely impacts the consumer who needs medical, legal or other types of one-on-one live communication support. To hurt the community this way, due to lack of regulation because there isn't a mandate in place, is not acceptable.
- TRS rules and regulations should not be uniformly applied to the VRS environment, as they are truly two **very different** types of communication access, that both happen to involve the phone. An example of this is visual harassment (sexually explicit calls), as well as processing of legal calls (where you should have an appropriately credentialed interpreter and not an interpreter that has not been appropriately trained and has had adequate preparation time to support a phone call involving legal issues). By allowing reimbursement to take place without the regulations to guide sensitive issues in the correct manner, FCC is setting itself up to be ultimately held responsible. To continue to leave it open with waivers and delays, lack of such accountability is ultimately

hurting the Consumer. This is not acceptable. **By mandating VRS, the FCC would be protecting the Consumers.**

- ❑ The model currently used to fund VRS is incorrectly applied because it does not address separation of costs between the state and federal jurisdictions. It relies on interstate carriers to fund both intrastate and interstate calls. Interstate carriers should not carry the burden of state obligations. Many states have already witnessed a decline in their TRS costs because more of their calls have gone to VRS and IP Relay which are being paid for by the interstate fund. There are some models which have their pros and cons, but the current FCC model for VRS and IP Relay isn't working as FCC consistently views the increasing customer demand for these broadband applications resulting in higher costs to the interstate fund making these products a large target for attack from the inter-exchange carriers. NECA's recommendations, which follows the current FCC rules (which were not adopted by its own TRS Advisory Committee) does not equally distribute the costs among both the interstate and intrastate jurisdictions. This is not acceptable.
- ❑ FCC's own recognition of the fact that telecommunication access for deaf and hard of hearing persons be on par with the most current technology available conflicts with **their lack of action mandating VRS as the most functionally equivalent service** currently available. The fact that VRS has proven itself as the preferred telecommunications method of choice for many deaf and hard of hearing people in its "brief history", points to the fact that VRS should be earmarked as mandatory. Especially when the number of calls placed using VRS in itself determines this functional equivalence. Where the FCC Commission is walking down a dangerous path is when FCC continues to re-define functional equivalence as something "optional" by continuing waivers such as hours of operation and answer speeds. This is not acceptable. Deviating from raising standards to achieve truer functional equivalence toward moving toward lowering standards (waivers for answer speed, and hours of operation) only serves to create an unequal method of establishing rates for providers and lower quality results for consumers. It would be more appropriate for instead, separate standards to be established. It is further apparent that NECA's following in line with the original July 30th ORDER, demonstrates its "independent" review of VRS through indicating that almost a \$10 per minute rate would have been reasonable, but this has been negated with recent invalid calculation of the rates which imposed restrictions on Providers. By directing NECA to move in this direction, the FCC threatens to take away Consumers choice for access, especially when the service continues to be viewed as "optional" with waivers, and with rates based on invalid data derived from invalid criteria used in the first place. All of which the bottom line is, these actions, lack thereof, ultimately has hurt the Consumers who need true functionally equivalent access, and in today's world, that means VRS.

In summary, we request the FCC recognize the invalidity of data collected pertaining to VRS; that adequate regulations nor incentives have not been provided to companies to invest in emerging broadband technologies for "tomorrow's world"; that VRS needs to be treated as a wholly separate service with its own set of unique rules and regulations; establish an appropriate funding mechanism that takes into consideration the

jurisdictional concerns; and establish separate standards for an separate oversight body to appropriately assess compliance and ongoing eligibility for reimbursement from the interstate funds. In mandating the service, the FCC would then be protecting the Consumers by putting into place appropriate oversight controls and authority to further expand on its data collection, modifying its criteria in order to appropriately guarantee quality of service based on a 24/7 operation.

Recommendation: Based on findings surrounding the question of invalidity related to the criteria used to issue its Interim Order on June 30th, 2003, NorCal Center on Deafness requests that the FCC dispose the methodology used for its recent 2004 proposal. We request that the FCC instead, revert back to approve rates originally recommended by NECA (April 2003 recommending \$14/per minute based on their review of VRS as a separate service) for VRS services effective July 1, 2004. We respectfully request this recommendation be a formally adopted by the FCC, by mandating VRS, setting up regulations, which will ultimately hold all Providers accountable and protect the Deaf Consumer. May this be the undertaking of the FCC itself, for this issue assigned as an action item, with the FCC acting on behalf, and by request of the Deaf Consumer population.

Submitted by,

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